Nos. 18-422, 18-726

IN THE

Supreme Court of the United States

ROBERT A. RUCHO, *et al.*,

Appellants,

v.

COMMON CAUSE, *et al.*,

Appellees.

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURTS FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MARYLAND

BRIEF OF *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.; LATINOJUSTICE PRLDEF; ASIAN AMERICANS ADVANCING JUSTICE; ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND; LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.; AND LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS IN SUPPORT OF APPELLEES

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INTEREST OF *AMICI CURIAE*[1]

Amici, listed individually in the Appendix to this brief, are among the country's leading civil rights organizations. They have a significant interest in ensuring the full, proper, and continued enforcement of the United States Constitution and the federal, state, and local statutes guaranteeing full and equal political participation, including the Voting Rights Act of 1965.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"[E]lected officials engaged in the single-minded pursuit of incumbency can run roughshod over the rights of protected minorities." *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 778 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part). The same is true with respect to the pursuit of partisan advantage. Both Democratic and Republican legislatures have used the power of the state to enact extreme partisan gerrymanders, retaining or enhancing their own grip on power and methodically subordinating voters who support an opposing party.

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[1] Pursuant to Supreme Court Rule 37.3, counsel for *amici curiae* certify that all parties have consented to the filing of this brief through letters from the parties on file with the Court. Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* certify that no counsel for a party authored this brief, in whole or in part, and that no person or entity, other than *amici curiae* and their counsel, made a monetary contribution to its preparation or submission.

Minority communities have often been pawns deployed or sacrificed in the pursuit of this partisan entrenchment.

There is no active claim that the maps presently before the Court built their partisan advantage on the backs of minority voters. But the North Carolina plan at issue here is the successor to a map that impermissibly packed minority voters to achieve similar partisan gains, *Cooper v. Harris*, 137 S. Ct. 1455 (2017); *Rucho* J.S. App. 155, 180-81. Jurisdictions in both Maryland and North Carolina—among many others—have in the past used racial discrimination, provable and less provable, as a tool to achieve partisan ends. If the Court withdraws the judiciary from policing the boundaries of partisan excess manifested by the record in these cases, brazen partisan misconduct will follow here and in other jurisdictions with unified partisan control of the redistricting process. History teaches that minority voters will inevitably be caught again in the crossfire.

Amici hope to assist this Court in considering the ramifications of the doctrine and practice of partisan gerrymandering on minority voters. In particular, as *amici* explain, a partisan gerrymandering claim requiring proof of invidious intent—driven by the desire to subordinate some voters based on their party affiliation and the desire to entrench an opposing party in power—will help to establish an administrable standard that guards against excessive partisanship in the redistricting process without undermining critical protections for minority voters.

When this Court as a whole last meaningfully considered the merits of a cause of action for partisan gerrymandering, all nine Justices recognized that "an excessive injection of politics" in the redistricting process is incompatible with the Constitution. *See Vieth v. Jubelirer*, 541 U.S. 267, 293 (2004) (plurality); *id.* at 312, 316-17 (Kennedy, J., concurring in the judgment); *id.* at 318, 326 (Stevens, J., dissenting); *id.* at 343-44 (Souter, J., and Ginsburg, J., dissenting); *id.* at 355, 360 (Breyer, J., dissenting). No consensus emerged, however, with respect to identifying when the role of politics in redistricting becomes excessive.

As Appellees make clear, such standards exist, and can be fully compatible with federal law protecting minority representation and political participation. This Court should establish a standard for adjudicating claims of partisan gerrymandering that ensures that such claims succeed only when plaintiffs prove invidious discrimination distinct from legitimate political choices. In the instant cases, each three-judge court found that the political party controlling state government intended to lock in partisan dominance of the state's congressional delegation, not through the persuasive force of its policies, but by manipulating district lines to entrench the power of certain voters and subordinate others based on their partisan political affiliation. *See Rucho* J.S. App. 155, 222, 286-88, 306; *Benisek* J.S. App. 12a, 16a, 23a-24a, 48a, 51a. Indeed, in each case at issue here, the intent to use government authority to subordinate opposition voters on the basis of their political affiliation was plain—and at times, both public and proud. *See Rucho* J.S. App. 156-57, 185; *Benisek* J.S. App. 23a-24a. It is entirely consistent

with the Court's prior jurisprudence to find that such extreme conduct entails impermissible discrimination, and requires no more than the deployment of familiar evidentiary tools. And as the Court's experience already demonstrates, such a holding would not likely subject federal courts to a flood of insubstantial claims.

Indeed, a viable cause of action addressing egregious partisan gerrymandering may assist the courts. Causes of action in which race and racial discrimination are central to the legal doctrine are essential in addressing some of the deepest and most pernicious forms of discrimination. That includes legislation abusing race as a proxy for party, or otherwise targeting minorities for disfavored treatment based on other underlying motives, including the pursuit of partisan gain. But when both race and party play a role in legislators' pursuit of impermissible advantage, real partisan harms may accompany very real racial harms; in these instances, a claim to root out unconstitutional partisan excesses, alongside doctrine tailored to address racial discrimination, would ensure the presence of a distinct, properly tailored tool to address each distinct injury. And at times, we have also observed that litigants whose primary concerns are partisan will occasionally attempt to misuse unwarranted race-based voting claims for their own ends. A properly structured cause of action for partisan gerrymandering can help courts better distinguish and channel claims down the appropriate litigation paths, avoiding unwelcome doctrinal distortion and providing full redress for invidious discrimination of all forms.

ARGUMENT

A. A Cause of Action for Partisan Gerrymandering Is Justiciable and Requires Proof of Invidious Discrimination Against Voters Based on Their Political Party Affiliation

This Court has previously determined claims of unconstitutional partisan gerrymandering to be justiciable. *See, e.g.*, *League of United Latin Am. Citizens ("LULAC") v. Perry*, 548 U.S. 399, 414 (2006); *Davis v. Bandemer*, 478 U.S. 109, 125 (1986).

Among the questions presented in this case, however, are issues concerning the particular standard or standards for adjudicating claims of partisan gerrymandering under various constitutional theories. Each three-judge court correctly determined that invidious intent was an essential element of such a standard no matter the constitutional clause involved, and found facts supporting proof of invidious intent. *Rucho* J.S. App. 141-42, 155-87, 227-74, 280-88, 305-13; *Benisek* J.S. App. 42a-43a, 51a, 59a, 61a, 76a n.3. A justiciable standard for claims that partisan gerrymandering violates the Constitution—drawn from any of several textual predicates, and whatever its other elements—ought to require proof of invidious intent to subordinate voters, driven by a focus on their partisan affiliation and with the goal of entrenching an opposing political party's power. And this Court need not determine the outer bounds of such a requirement to recognize that neither three-judge court clearly erred in finding the record in these cases sufficient to support a finding of constitutionally invidious action.

Requiring proof of this sort of invidious intent to subordinate is consistent with this Court's doctrine. In *Gaffney v. Cummings*, 412 U.S. 735 (1973), this Court found no constitutional concern with a plan intended to allocate political power to parties in accordance with each party's voting strength. But the Court also noted that an otherwise acceptable redistricting plan would be vulnerable under the Fourteenth Amendment if it is invidiously discriminatory: intended to "minimize or cancel out the voting strength of racial or *political* elements of the voting population." *Id.* at 751 (internal quotation marks and citations omitted) (emphasis added).

This Court has also clearly held that the First Amendment prohibits the government from deploying state power with an invidious intent to harm on the basis of partisan affiliation. A public employer may demote an employee for many reasons that do not offend the Constitution. But the First Amendment normally prevents a public employer from demoting an employee out of a desire to punish the employee's support for a political candidate. *See Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1417-18 (2016). That is, "the government's reason for demoting [the employee] is what counts here." *Id.* at 1418. *See also Shapiro v. McManus*, 203 F. Supp. 3d 579, 596 (D. Md. 2016) (three-judge court) ("Because there is no redistricting exception to this well-established First Amendment jurisprudence, the fundamental principle that the government may not penalize citizens because of how they have exercised their First Amendment rights thus provides a well-understood structure for claims challenging the constitutionality of a State's

redistricting legislation—a discernable and manageable standard.").

The manifestation of invidious intent also played a central role in last year's oral argument in *Gill v. Whitford*. Justice Kennedy repeatedly asked whether a law facially proclaiming the use of all legitimate redistricting factors to favor one party (and disfavor another) would be constitutional—a hypothetical Justice Alito described as incorporating a "perfectly manageable standard." *See* Transcript of Oral Argument at 19-20, 26-27, *Gill v. Whitford*, 138 S. Ct. 1916 (2018) (No. 16-1161). The question sets aside methods of proof, and highlights instead the legal crux of the matter: a driving insistence on using state authority to entrench the political power of a group of voters favored based on their partisan preferences, and to similarly subordinate a group singled out as disfavored based on different partisan preferences. The attorney representing Wisconsin's legislature correctly acknowledged that such a statute would violate both the Equal Protection Clause and the First Amendment. *Id.* at 27; *see also* Transcript of Oral Argument at 46-47, *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (No. 17-333) (revealing Justice Kennedy's return to the same question, with a similar answer).

To be sure, the evidence of unconstitutional conduct will not always be as clear as in Justice Kennedy's hypothetical. Some violations will be plainly marked and some will be perpetrated under pretext, to be smoked out via familiar judicial tools, *cf., e.g., Vill. of Arlington Heights v. Metro. Hous. Dev'p Corp.*, 429 U.S. 252, 266 (1977). The fact that

some plaintiffs will fail to muster the necessary evidence to prevail is not reason to deny the existence of a cause of action. Justice Kennedy's questions reveal that there is a fundamental and widely acknowledged harm at the heart of these cases.

A gerrymandering cause of action that requires proof of invidious intent to subordinate voters driven by a desire to harm them for their partisan affiliation does not risk undue interference with the legitimate political process. As this Court has recognized, redistricting is "root-and-branch a matter of politics." *Vieth*, 541 U.S. at 285 (plurality); *see also Gaffney*, 412 U.S. at 752-73. But this does not mean that redistricting is, or need be, root-and-branch an attempt to subordinate voters on the basis of their political affiliation. There is a distinction between proper political contestation and improper partisan subordination of voters because of their preferred group affiliation. The vast majority of legislation involves choices that are inherently political—for example, how much revenue to allocate to different government programs, or what should be eligible for tax deductions. These are charged political questions that present opportunities for partisan posturing, but they do not necessarily involve a conscious effort to subordinate voters because they are Republicans or Democrats. *See* Justin Levitt, *Intent is Enough: Invidious Partisanship in Redistricting*, 59 WM. & MARY L. REV. 1993, 2013-18 (2018).

Beyond the requirements of federal and state law, including those that protect minority voters from discrimination, there are many political and practical choices in the drawing of any redistricting map. In

most states, these include choices about whether to follow certain county, city, or precinct lines but not others, or certain roads, rivers, or rail lines but not others; about the degree to which lines should follow geometric patterns or patterns of residential development; about allowing certain communities to congregate within one district or to span district lines; and about the degree to which a district should have a distinct character or span multiple competing interests, and which of those interests should dominate. They include choices about whether to protect the relationship of incumbents to their constituents, by consistently maintaining the cores of prior districts (as distinct from selectively protecting incumbents from their constituents by siphoning off opposing partisans). *See LULAC*, 548 U.S. at 440-41; *White v. Weiser*, 412 U.S. 783, 791 (1973). They include choices about whether to resolve each of these decisions in the same way throughout a jurisdiction, or whether to resolve them differently, with different priorities, in different portions of the jurisdiction. All of these may properly be political and practical choices. Prohibiting state action driven by the invidious intent to subordinate on the basis of partisan affiliation leaves each of these legitimate political choices intact. *See* Levitt, *supra*, at 2025-27.

A state actor's invidious intent to methodically subordinate voters on the basis of their partisan affiliation is also distinct from the natural desire of legislators chosen in partisan elections to seek legitimate partisan advantage. The appropriate means by which a legislator gains partisan advantage is through policy action that increases the legislator's appeal to voters with partisan policy preferences.

Such conduct is quite distinct from state action driven by a design to lock in a legislator's electoral success not by appealing to voters, but by targeting presumed opposing voters for systematic subordination through changes to the electoral landscape itself. *Cf.* Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 428-29 (1996) (recognizing constitutional limits on government restrictions of speech because that speech may threaten incumbent self-interest).

Finally, focusing on the invidious intent to subordinate does not demand a process blind to partisan inputs or partisan outcomes. Neither a legislator's knowledge that certain communities are more likely to vote for Democratic or Republican candidates, nor that given districts are more likely to lean Democratic or Republican, is itself indicative of the intent to entrench power at opponents' expense. Michael S. Kang, *Gerrymandering and the Constitutional Norm Against Government Partisanship*, 116 MICH. L. REV. 351, 352, 368 (2017); *cf. Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). And this Court has long recognized the proper distinction between a legislature's permissible consideration of community characteristics and the impermissible intent to subordinate community voting power because of those characteristics. *See LULAC*, 548 U.S. at 513-14 (Scalia, J., concurring in the judgment in part and dissenting in part).

Both state and federal courts have been able to identify legally cognizable invidious intent, distinct from the standard rough-and-tumble of other political

choices. In *Larios v. Cox*, a three-judge court determined that population disparities that would not otherwise have raised prima facie constitutional concern were constitutionally invalid because they were driven by invidious partisan intent to subordinate. 300 F. Supp. 2d 1320, 1329-30, 1334 (N.D. Ga. 2004) (three-judge court). This Court summarily affirmed that decision. 542 U.S. 947 (2004). Similarly, the Fourth Circuit recently invalidated a county redistricting plan that would otherwise have passed muster, based on proof that the districts' population deviations were driven by the invidious partisan intent of the North Carolina state legislature. *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 345-46, 351 (4th Cir. 2016); *see also City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 937, 939, 943 (M.D.N.C. 2017) (North Carolina state legislature); *Hulme v. Madison Cnty.*, 188 F. Supp. 2d 1041, 1050 (S.D. Ill. 2001) (Madison County, Illinois, county board). Florida and Pennsylvania state courts have also examined redistricting plans for invidious partisan intent under their respective state constitutions. *See* FLA. CONST. art. III, § 16(c); *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So.3d 597, 598, 617-19, 641-45, 648-51, 654, 659-62, 669-73, 676-78, 679-80 (Fla. 2012); *In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So.3d 872, 881-82, 887-91 (Fla. 2012); *League of Women Voters of Fla. v. Detzner*, 172 So.3d 363, 378-86, 391-93, 402-13 (Fla. 2015); *League of Women Voters of Fla. v. Detzner*, 179 So.3d 258, 271-74, 279-80, 284 (Fla. 2015); *League of Women Voters of Pa. v. Pennsylvania*, 178 A.3d 737, 817-21 (Pa. 2018). And, of course, the three-judge courts in

the instant actions were able to distinguish invidious partisan intent to subordinate from the many other legitimate political and practical choices involved in drawing the particular districts at issue. *Rucho* J.S. App. 155-87, 227-74; *Benisek* J.S. App. 55a-56a; *see also Whitford v. Gill*, 218 F. Supp. 3d 837, 883-98 (W.D. Wis. 2016) (three-judge court), *vacated on other grounds*, 138 S. Ct. 1916 (2018) (Wisconsin state legislative map).

In other cases, the evidence has not supported the allegations of invidious unconstitutional action in the redistricting process. For instance, this Court affirmed the rejection of a claim premised on invidious partisanship in the redistricting process, based not on the impossibility of making such a determination, but on the insufficiency of proof offered by the plaintiffs. *Harris v. Ariz. Ind. Redistricting Comm'n*, 136 S. Ct. 1301, 1307 (2016). And in the instant North Carolina case, the three-judge court rejected a district-specific showing of invidious intent with respect to District 5. *Rucho* J.S. App. 243.

All of these courts used familiar tools to test for invidious partisan intent in the redistricting process, seeking "an understanding of official objective emerg[ing] from readily discoverable fact, without any judicial psychoanalysis of a drafter's heart of hearts." *McCreary Cnty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). Following this Court's direction for assessing official purpose in a variety of contexts, each tribunal conducted a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights*, 429 U.S. at 266. Particularly when a redistricting plan

proved to be a significant outlier, its excessive partisan impact occasionally provided "an important starting point," *Feeney*, 442 U.S. at 279 (quoting *Vill. of Arlington Heights*, 429 U.S. at 266), for such an analysis. However, recognizing that legitimate redistricting factors will inevitably yield a partisan impact, no court relied on an assessment of impact alone. Instead, these courts further examined the redistricting context, including but not limited to: statements by mapmakers themselves, the conduct of the legislative session, the progression of draft maps up to the final product, and the map's fit with traditional redistricting principles. *See Raleigh Wake Citizens Ass'n*, 827 F.3d at 346; *City of Greensboro*, 251 F. Supp. 3d at 943-49; *League of Women Voters of Fla.*, 172 So.3d at 380-86, 390-91; *Hulme*, 188 F. Supp. 2d at 1050-51. Moreover, these courts also considered whether this evidence of invidious intent was effectively rebutted by evidence revealing that the district boundaries were, in fact, materially driven not by invidious partisan intent to subordinate but by legitimate legislative motives. *Id.*

Courts do not lightly make such determinations. Nor do plaintiffs lightly bring such cases. Appellants suggest—as defendants in such circumstances often do—that once the judicial doors are opened they will be torn off in a flood of frivolous litigation. *Rucho* App. Br. 39. Experience indicates otherwise. Since at least 2004, federal courts have been available to hear claims that invidious partisanship impermissibly motivated minor variations in district population. Since 2004, there have been thousands of state and local legislative maps, pre-existing and newly drawn, with a minor

population variance. But *Larios* has been cited only seven times by federal appellate courts substantively reviewing allegations of improper political motivation in the redistricting process.

Still, even if the marginal case posed concerns, the records here stand far from the marginal case. *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018), just last Term, may provide an apt analogy. *Lozman* concerned the arrest of a civic gadfly at a city council meeting, allegedly pursuant to a premeditated city policy to intimidate him in retaliation for his activism. *Id.* at 1954. The legality of the arrest turned on proof of impermissible motive, and the court expressly noted the "risk that the courts will be flooded with dubious retaliatory arrest suits." *Id.* at 1953. But in the face of objective evidence of a potentially premeditated plan, this Court decided the case before it and left the floodgate concerns for the future. *Id.* at 1954. "[W]hen retaliation against protected speech is elevated to the level of official policy, there is a compelling need for adequate avenues of redress." *Id.*

There will likely be no official policy to subordinate voters on the basis of partisan affiliation clearer than the policy firmly established here — and openly acknowledged by the governing political parties in North Carolina and Maryland. Each three-judge court found that plaintiffs proved not merely that the legislature had partisan information or was aware of a partisan impact, but that it drew the map in question specifically "because of" its ability to entrench one party in power and subordinate voters affiliated with an opposing party. *Rucho* J.S. App.

155; *Benisek* J.S. App. 48a-51a; *see also Feeney*, 442 U.S. at 279. In North Carolina, this purpose was officially declared in the formal criteria established by the state, and proudly promoted in the public hearings of the legislature's redistricting committee. *Rucho* J.S. App. 156-57, 183. The public record established by the North Carolina legislature is, in effect, Justice Kennedy's hypothetical question from the oral arguments in *Gill* and *Benisek* come to life. Likewise, in Maryland, legislators acknowledged in talking points and floor speeches their drive to accomplish similar partisan entrenchment with respect to the district at issue. *Benisek* J.S. App. 23a-24a.

The three-judge courts also found that in each state, the mapmakers' intent was clear not only from express statements, but also from other familiar evidentiary sources—such as the redistricting process itself, the information relied upon in drawing the map, and empirical evidence of the strong partisan advantage present in the final maps approved by the legislatures. In North Carolina, the Republican Party held exclusive control of the map drawing process, working with a consultant to finalize the map *before* the bipartisan redistricting committee had even met or adopted governing redistricting criteria and before public hearings were held. *Rucho* J.S. App. 156. No public input was considered as a part of the map drawing process; however, mapmakers relied strongly on past election results in their analysis to develop a map that "would favor Republicans for the remainder of the decade." *Id.* at 158. Indeed, in a 50-50 state, the map was designed to elect 10 Republicans and 3 Democrats, only because (as the legislative leadership bragged) they did "not believe it[would be] possible to

draw a map with 11 Republicans and 2 Democrats," *id.* at 183—and the map achieved its primary goal in a manner that left it an "extreme statistical outlier," *id.* at 159-172.

Likewise, in Maryland, the court found that "with respect to the mapmakers' intent, the process described in the record admits of no doubt." *Benisek* J.S. App. 48a. Although the Redistricting Advisory Committee held public hearings and was ostensibly tasked with recommending a map, privately, Democratic representatives retained a consulting firm to draw proposed maps with the exclusive goals of maximizing Democratic incumbent protection and enlarging Democratic congressional power. *Id.* at 14a. Maryland Democratic officials were guided by "a narrow focus on diluting the votes of Republicans." *Id.* at 48a. Accordingly, the mapmakers relied on a custom-tailored partisan index to ensure that a generic Democratic candidate would win the Sixth District, and rejected alternative maps that placed the outcome in greater doubt. *Id.* at 15a-17a. As a result, according to analysis by the Cook Political Report, as compared to the preexisting map, under the new redistricting plan, the Sixth District "experienced the single largest [partisan] swing of any district in the Nation." *Id.* at 24a-25a. The map was approved by the Advisory Committee and subsequently, the General Assembly, both without a single Republican vote. *Id.* at 20a, 23a.

Amici recognize that neither the North Carolina and Maryland legislatures' partisan excesses nor their candor may presently or in the future reflect the norm. Absent this Court's

affirmation of the three-judge courts' decisions, however, it is difficult to understand why they would not become the new status quo, demonstrating to citizens that expressions of political affiliation are not constitutionally protected but available grounds for punishment by the state. Surely, this Court is capable of policing the worst excesses of partisan discrimination to preserve the ability of voters to express their political views through the ballot box without fear of reprisals from the governing political party.

Indeed, intervention here is vital even if it yields malfeasance less explicit in the future. (If less explicit malfeasance is likely to also be a bit less excessive, that would be a welcome consequence on its own.) Invidious intent cannot be assumed, *see Feeney*, 442 U.S. at 278-79, but must instead be proven. The standard is a demanding one, and necessarily means that a doctrinal requirement to prove the invidious intent to subordinate voters based on their partisan preference will inevitably leave some invidious partisanship unaddressed. *Cf. McCreary Cnty.*, 545 U.S. at 863 (recognizing that some legitimate intent cases may founder on the absence of proof). That litigation reality, however, does not detract from the value of the ability to confront and correct invidious discrimination that *can* be proven, including that which is open and notorious on its face. *Cf. Batson v. Kentucky*, 476 U.S. 79, 102, 105-08 (1986) (Marshall, J., concurring) (endorsing doctrine to confront racially discriminatory peremptory challenges, while acknowledging that illegitimate peremptory challenges beyond the doctrine's reach are inevitable).

Even though a doctrinal requirement to prove invidious partisan intent leaves some invidious partisanship unaddressed, the requirement is necessary to a manageable constitutional claim. *See, e.g.*, *Bandemer*, 478 U.S. at 127; Kagan, *supra*, at 509-11. Consistent with this premise, no party in the instant cases has requested, no three-judge court has proposed, and this Court should not adopt, any single quantitative metric as irrebuttable proof of an unconstitutional partisan gerrymander. This brief takes no position on the comparative merits or limitations of any particular quantitative measure in providing evidence of constitutional irregularity, or even whether such measures, however helpful in other cases, are necessary given the records at hand. Modest "scores" using any of these measures may flag plans produced by legislatures heeding only traditional redistricting principles without improper motivation, and therefore constitutionally unremarkable. Extreme "scores," on any of several of these quantitative measures, may indicate partisan results sufficiently anomalous to constitute, *inter alia*, circumstantial evidence of invidious partisan intent to subordinate. But as the three-judge courts in these cases emphasized, a jurisdiction should always have the opportunity to demonstrate that even an extreme quantitative score was actually caused by legislative focus on constitutionally legitimate factors, including

traditional redistricting principles.[2] *See, e.g.*, *Rucho* J.S. App. 215-22; *Benisek* J.S. App. 41a-43a.

B. A Properly Structured Claim for Partisan Gerrymandering Is Consistent with the Voting Rights Act

A properly structured partisan gerrymandering claim—one that requires proof of invidious intent to subordinate voters driven by their partisan affiliation—is entirely consistent with the Voting Rights Act of 1965 ("VRA"). Of course, compliance with the VRA does not insulate an unconstitutional partisan gerrymander from judicial scrutiny. Legislatures might produce maps that comply with the VRA along the way to implementing an unlawful plan premised on invidious partisan intent, just as legislatures might produce plans that are fair along partisan lines even as they violate the VRA (or Fourteenth and Fifteenth Amendments) by discriminating based on race. Neither is lawful. But compliance with the VRA and the absence of invidious

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[2] As this Court recently emphasized in a different redistricting context, this inquiry into legislative intent turns on "the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 799 (2017); *cf. McCreary Cnty.*, 545 U.S. at 864 (refusing to credit a hypothetically permissible purpose that is merely a sham). Particularly in the arena of invidious discrimination, jurisdictions should not be permitted to rescue actual manifestations of unlawful intent to subordinate with hypothetical interests invented for litigation purposes.

partisan intent are not in any way inherently in conflict.

Section 2 of the VRA, 52 U.S.C. § 10301, imposes a "permanent, nationwide ban on racial discrimination in voting." *Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013). It prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." *Id.* § 10301(a).

In 1982, Congress amended Section 2 to make clear that a statutory violation can be established by showing discriminatory intent, a discriminatory result, or both. *See Thornburg v. Gingles*, 478 U.S. 30, 34-37, 43-45 (1986); *see also* 52 U.S.C. § 10301(a)-(b); S. Rep. No. 417, 97th Cong., 2d Sess. (1982). In the redistricting context, a jurisdiction may comply with the prohibition on discriminatory intent by drawing district lines without the intent to harm voters based on their race or ethnicity. It is obvious that a jurisdiction can satisfy this standard without drawing lines intended to subordinate voters on the basis of their partisan political affiliation.

Similarly, a jurisdiction may comply with the VRA's prohibition on discriminatory results without setting out to subordinate voters on the basis of their political affiliation. Based on local demographic, historical, and political contexts, jurisdictions may have an obligation under Section 2 to draw districts preserving minority voters' equal "opportunity . . . to elect representatives of their choice." 52 U.S.C. § 10301(b). Where a compact and sizable minority

community is politically cohesive, and where voting is sufficiently polarized that the surrounding electorate would otherwise usually prevent the minority community from electing a candidate of choice, jurisdictions have an obligation to ensure that districts, in the totality of circumstances, do not create a discriminatory abridgement of electoral opportunity. *Gingles*, 478 U.S. at 44-45, 50-51.

Compliance with Section 2 of the VRA will thus often require attention to, *inter alia*, the voting and electoral patterns in a local community. *Id.* at 45 (recognizing that "whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality and on a functional view of the political process"); *id.* at 79 (noting that this determination "requires an intensely local appraisal of the design and impact of the contested electoral mechanisms"); *see also Goosby v. Town of Hempstead*, 956 F. Supp. 326, 331 (E.D.N.Y. 1997) (using a myriad of factors identified by a bipartisan Congress, "district judges are expected to roll up their sleeves and examine all aspects of the past and present political environment in which the challenged electoral practice is used").

The VRA does not, however, require districts drawn with the intent to entrench or subordinate Democrats, Republicans, or members of any other political party. And a district that is drawn favoring Democrats or favoring Republicans but that does not provide a minority community the equitable "opportunity . . . to elect representatives of *their* choice," 52 U.S.C. § 10301(b), fails to satisfy the jurisdiction's VRA obligations. The VRA is rigorously

focused on the distinct preferences of minority communities facing discrimination, not on generic partisan results. *Cf., e.g., Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994) ("[T]he Act's guarantee of equal opportunity is not met when, in the words of Judge Richard Arnold, '[c]andidates favored by blacks can win, but only if the candidates are white.'") (quoting *Smith v. Clinton*, 687 F.Supp. 1310, 1318 (E.D. Ark. 1988) (three-judge court)).

This means that while the VRA requires attention to local voting patterns, it does not require districts drawn for voters because of their partisan affiliation. *A fortiori*, it in no way requires an invidious intent to subordinate voters based on their partisan affiliation. Indeed, many courts, including this Court, have required jurisdictions to comply with their obligations under the VRA, without ever intimating that doing so would require invidious partisan intent. And just recently, in a case involving population disparities, this Court unanimously affirmed the rejection of a claim of invidious partisan intent when the facts instead supported the conclusion that the disparities were driven by good-faith efforts to comply with the VRA. *Harris*, 136 S. Ct. at 1309-10. That is, this Court recognized that legitimate VRA compliance did not—and does not—produce unconstitutionally invidious partisanship.

Beyond the VRA, other legitimate redistricting considerations, including traditional redistricting principles, may similarly further the concerns of minority voters without running afoul of a properly structured partisan gerrymandering claim. For example, in some circumstances, the political

interests of minority voters may be served by efforts to keep that community of interest intact within a district, even where there is no federal mandate to do so. Keeping that community intact raises no inference that a legislature intends to subordinate voters based on their partisan affiliation.

Similarly, in some circumstances, the political interests of minority voters may be served by preserving the core of an existing district, and hence the relationship of a population with a longstanding incumbent. Doing so raises no inference that a legislature intends to subordinate voters based on their partisan affiliation. A robust requirement of invidious intent ensures that legitimate compliance with traditional redistricting principles, including those that advance the interests of minority voters, is not inadvertently conflated with illegitimate partisanship.

C. A Properly Structured Claim for Partisan Gerrymandering Will Help Avoid Detrimental Distortion in Cases Brought Under Doctrines Involving Race

Cases involving claims of racial discrimination under the VRA and the Fourteenth and Fifteenth Amendments play an essential role in remedying the deepest and most pernicious forms of discrimination in voting. *See, e.g.*, *LULAC*, 548 U.S. at 438-42 (finding vote dilution in violation of Section 2 of the VRA with respect to Congressional District 23 in Texas); *Gingles*, 478 U.S. at 34, 80 (finding vote dilution in violation of Section 2 of the VRA with respect to state legislative districts in North

Carolina); *Rodgers v. Lodge*, 458 U.S. 613 (1982) (finding vote dilution in violation of Fourteenth and Fifteenth Amendments with respect to county commission in Georgia); *White v. Regester*, 412 U.S. 755, 765-70 (1973) (finding vote dilution in violation of the Fourteenth Amendment with respect to state house districts in Texas); *cf. Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016) (three-judge court) (finding unconstitutional racial gerrymander with respect to state legislative districts in North Carolina), *aff'd*, 137 S. Ct. 2211 (2017).

No doubt they will continue to do so. As this Court has recognized, "racial discrimination and racially polarized voting are not ancient history," and "[m]uch remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions." *Bartlett v. Strickland*, 556 U.S. 1, 25 (2009) (plurality); *see also Shelby Cnty.*, 570 U.S. at 536 ("[V]oting discrimination still exists; no one doubts that.").

Racial discrimination, of course, is morally, historically, and legally distinct from partisan subordination. Partisan impulses have, however, repeatedly provided disturbing incentives for officials of both major parties to draw districts that disadvantage minority voters. The absence of a meaningful partisan gerrymandering doctrine has not only fostered this abuse, but also led to further detrimental impacts for voters and for the law. Jurisdictions in race-based redistricting cases have inappropriately and sometimes successfully claimed invidious partisan purpose as a defense. And

claimants with partisan motives may bring inappropriate race-based cases that distort the jurisprudence of racial harm. The distinct harms of partisan and racial discrimination in redistricting merit two distinct causes of action, for the benefit of the law and the courts, and voters of all kinds.

History shows that in the absence of a firm understanding of the illegality of invidious partisan gerrymandering, *both* major political parties—Democratic and Republican—have drawn electoral districts in pursuit of their excessive partisan interests in ways that have harmed minority voters.

Following the 1970 Census, for example, Texas Democrats drew multimember districts in Dallas and Bexar counties that were "unconstitutional in that they dilute the votes of racial minorities." *Graves v. Barnes*, 343 F. Supp. 704, 708-709, 724-34 (W.D. Tex. 1972) (three-judge court). A three-judge district court did not reach the partisan gerrymandering claim brought by Republican voters and officials because the claim of racial vote dilution delivered the requested relief. *Id.* at 735. This Court unanimously affirmed that finding of unconstitutional vote dilution. *Regester*, 412 U.S. at 765-70.

Similarly, in Mississippi, following the 1980 Census, Black voters challenged the state's congressional redistricting plan, drawn by Democrats, which "divided the concentration of black majority counties located in the northwest or 'Delta' portion of the state among three districts." *Jordan v. Winter*, 604 F. Supp. 807, 809 (N.D. Miss. 1984) (three-judge court), *aff'd sub nom.*, *Miss. Republican Executive Comm. v. Brooks*, 469 U.S. 1002 (1984). The districts

were drawn to protect three incumbent Democrats from Republican challengers (and thus maintain the Democrats' control of the state's congressional delegation), and Republican officials in Mississippi "lobb[ied] the Justice Department on behalf of Mississippi black[voters] and Republicans to reject the legislature's redistricting plan." Art Harris, *Blacks, Unlikely Allies Battle Miss. Redistricting*, Wash. Post, June 1, 1982. The Department of Justice interposed an objection under Section 5 of the VRA, and a three-judge district court then held that a subsequent iteration of the redistricting plan continued to discriminate against Black voters in violation of Section 2 of the VRA. *Jordan*, 604 F. Supp. at 809, 813-15.

As noted above, the Democratic Party is not alone in pursuing redistricting plans that seek excessive partisan advantage at the expense of minority voters. In 2003, after Texas Republicans "gained control" of "both houses of the [state] legislature," they drew a new congressional redistricting plan with "the dual goal of increasing Republican seats in general and protecting [Republican Henry] Bonilla's incumbency." *LULAC*, 548 U.S. at 423-24. In doing so, however, the legislature diluted Latino voting strength in Congressional District 23, in violation of Section 2 of the VRA. *Id.* at 438-42. As this Court observed, "[t]he State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the cohesive and politically active Latino community in the district." *Id.* at 441. "This b[ore] the mark of intentional discrimination that could give rise to an equal

protection violation." *Id.* at 440. In 2011, the Republican legislature again redrew the lines, including District 23. "As it did in 2003, the Legislature [ ] reconfigured the district to protect a Republican candidate who was not the Latino candidate of choice from the Latino voting majority in the district." *Perez v. Abbott*, 253 F. Supp. 3d 864, 884 (W.D. Tex. 2017) (three-judge court). Indeed, a three-judge court described the map as a whole as follows:

> It is undisputed that Defendants engaged in extreme partisan gerrymandering in drawing the map, ignoring many if not most traditional redistricting principles in their attempt to protect Republican incumbents, unseat [a Democratic incumbent], gain additional Republican seats, and otherwise gain partisan advantage. Defendants do not really dispute the fact that minority populations are divided or "cracked" in the plan . . . .

Id. at 945. Ultimately, the court found that the state's treatment of minority voters in 2011 amounted to multiple violations of Section 2 of the VRA and the Constitution. *Id.* at 908, 938, 962.

And the North Carolina map now before the Court is the successor plan to a 2011 map that, in the words of its own author, sought to "create as many districts as possible" that Republicans would win and "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." *Rucho* J.S. App. 180. As part of its means to this end, the legislature chose an

equally impermissible path: intentionally and unjustifiably overpacking minority voters in two specific districts.[3] *Harris*, 137 S. Ct. at 1469-78.

In cases of this type, jurisdictions often seek to defend themselves by asserting that the complaints turn more substantially on partisanship than they do on race. *See Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563, 567, 586 (N.D. Ill. 2011) (three-judge court); *Harris*, 137 S. Ct. at 1473, 1476. The absence of meaningful partisan gerrymandering doctrine allows such arguments to flourish.

In statutory vote dilution cases, such a defense has no purchase. *See, e.g.*, *Gingles*, 478 U.S. at 63-67, 74 (plurality); *id.* at 100 (O'Connor, J., concurring in the judgment); *Goosby v. Town of Hempstead*, 180 F.3d 476, 492-94, 495-96 (2d Cir. 1999) (rejecting the argument that partisan explanations for otherwise proven racial vote dilution can defeat a VRA claim).

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[3] It is not inconsistent to understand that North Carolina pursued invidious partisan advantage and that it did so through the predominant and unjustified use of race. The particular reason why specific individuals were moved within or without certain identified districts was predominantly based on their race and without adequate legitimate justification. *Harris*, 137 S. Ct. at 1469-78. And the underlying reason to move these individuals based on their race was the drive to entrench Republicans and subordinate Democrats. *Rucho* J.S. App. 180. The legislature employed an impermissible means to obtain an unconstitutional objective. *See Harris*, 137 S. Ct. at 1473 n.7; *infra* at 28-29.

Similarly, in constitutional claims, where the evidence establishes that voters have been targeted based on their race or ethnicity, as a proxy for party, such a defense is irrelevant. Courts have repeatedly affirmed that the unjustified targeting of minority voters for injury based on their race is unlawful, whether they are targeted based on animus or as the means to achieve ultimate partisan ends. *See, e.g.*, *Veasey v. Abbott*, 830 F.3d 216, 241 n.30 (5th Cir. 2016) (en banc) (Haynes, J.) (noting that "[i]ntentions to achieve partisan gain and to racially discriminate are not mutually exclusive" and that accordingly, "acting to preserve legislative power in a partisan manner can also be impermissibly discriminatory"), *cert. denied*, 137 S. Ct. 612 (2017); *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) (noting that "intentionally targeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose"), *cert. denied*, 137 S. Ct. 1399 (2017); *Garza*, 918 F.2d at 778 & n. 1 (Kozinski, J., concurring and dissenting in part) (explaining that incumbents may pursue intentional racial discrimination for political gain without displaying racial animus); *One Wis. Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 924-25 (W.D. Wis. 2016) (holding that a voting measure in Wisconsin "was motivated in part by the intent to discriminate against voters on the basis of race" and that "suppressing the votes of reliably Democratic minority voters in Milwaukee was a means to achieve [a] political objective"), *appeal docketed*, No. 16-3091 (7th Cir. Aug. 3, 2016); *see also Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (finding, in the circumstances of that case, that "there is little

point . . . in distinguishing discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus"); *cf. Harris*, 137 S. Ct. at 1473 n.7 (noting, in the context of racial gerrymander claims, that strict scrutiny applies "if legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests").

However, as this Court and other federal courts have recognized, race and party are, in certain contexts, closely intertwined. *See, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305 (2018); *Harris*, 137 S. Ct. at 1474 (noting evidence that in North Carolina, "racial identification is highly correlated with political affiliation" (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001))); *United States v. Charleston Cnty.*, 365 F.3d 341, 352 (4th Cir. 2004) (Wilkinson, J.) (noting evidence that in South Carolina, party affiliation and race were "inextricably intertwined"); *Perez*, 253 F. Supp. 3d at 945 (noting evidence that "race and political party affiliation are strongly correlated in Texas").[4] Particularly in those circumstances, defendants may attempt to shield themselves from claims of racial discrimination by claiming partisan

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[4] Of course, even where such correlation exists, it in no way renders race and party legally equivalent or fungible. As described above, targeting minority voters for injury has long been recognized as unlawful, period, whether as a proxy for party or not. And minority voters continue to face unlawful discrimination within closed party primaries, where opposition on the basis of party is not at issue. *See, e.g.*, *McMillan v. Escambia Cnty., Fla.*, 748 F.2d 1037, 1044 (11th Cir. 1984).

intent—and where the evidence is insufficient to distinguish the two, an egregious gerrymander may inflict its damage without evidence sufficient to prove that voters were specifically targeted because of their race or ethnicity. *See, e.g.*, *Perez*, 253 F. Supp. 3d at 969-72. Confessing to one misdeed may supply a narrow defense to another, but it should not yield blanket exculpation. Where the intent to entrench favored partisans and subordinate opposing voters based on their partisanship works its own material harm, doctrines designed to combat racial injustice should not provide the exclusive source of relief. In these circumstances, the recognition of a properly structured claim for partisan gerrymandering could not only lessen the need for courts to disentangle race and party, but also better ensure that the fundamental rights of all voters are fully protected. *See, e.g.*, Bruce E. Cain & Emily R. Zhang, *Blurred Lines: Conjoined Polarization and Voting Rights*, 77 OHIO ST. L.J. 867, 871, 904 (2016) (noting that "racial, partisan, and administrative motives have blurred" and that "if the Court decides to adjudicate partisan gerrymandering claims, it would obviate much of the quagmire . . . on how racial motivations may be disentangled from partisan ones").

Finally, in the absence of a legal standard for claims of partisan gerrymandering, some partisan actors—both Democrats and Republicans—have also attempted to bring unwarranted race-based claims to address partisan excesses. *See, e.g.*, Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593, 630-31 (2002) ("One of the perverse consequences of the absence of any real constitutional vigilance over partisan

gerrymandering is that litigants must squeeze all claims of improper manipulation of redistricting into the . . . category of race.").

As demonstrated above, some circumstances raise both partisan and racial harm. But some do not. Litigation that stems from partisan and not racial discrimination but is brought under race-based causes of action raises the risk that courts would tailor facts or doctrine (*i.e.*, to try to fit a square peg into a round hole) in ways that are potentially detrimental to the development of the law. *See, e.g.*, Samuel Issacharoff & Pamela S. Karlan, *Where to Draw the Line?: Judicial Review of Political Gerrymanders*, 153 U. PA. L. REV. 541, 569 (2004) (noting "the spillover effects" of litigation brought to "attack political gerrymanders" under "doctrinal rubrics, such as section 2 of the [VRA] or the *Shaw* cases," and suggesting that "the cost of repackaging essentially partisan claims of excessive partisanship under one of these labels is something that needs to be considered"). Injury based on race and injury based on partisan affiliation are of different legal, moral, and historical character, and should be neither confused nor conflated. The notion that partisan claims may occasionally be merely masquerading as race-based causes of action may warp the law and generate skepticism around true race-based harms.

Legal doctrines focused on addressing racial discrimination should remain dedicated to that goal, without being subverted to contend with litigation incentives more suitable for claims in which the principal alleged injury is partisan. The recognition of a distinct litigation framework including a properly

structured claim for partisan gerrymandering would allow such cases to be channeled toward the most appropriate doctrinal paths and to avoid any negative spillover effect.

CONCLUSION

For the foregoing reasons, the judgments of the three-judge courts should be affirmed.

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APPENDIX

APPENDIX

List of Amici Curiae

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a non-profit, non-partisan law organization established under the laws of New York to assist Black and other people of color in the full, fair, and free exercise of their constitutional rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation.

LDF has been involved in numerous precedent-setting litigation relating to minority political representation and voting rights before state and federal courts, including lawsuits involving constitutional and legal challenges to discriminatory redistricting plans or those otherwise implicating minority voting rights. *See, e.g.*, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016); *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Houston Lawyers' Ass'n v. Attorney Gen. of Texas*, 501 U.S. 419 (1991);

Thornburg v. Gingles, 478 U.S. 30 (1986); *Beer v. United States*, 425 U.S. 130 (1976); *White v. Regester*, 422 U.S. 935 (1975) (per curiam); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Terry v. Adams*, 345 U.S. 461 (1953); *Schnell v. Davis*, 336 U.S. 933 (1949) (per curiam); *Smith v. Allwright*, 321 U.S. 649 (1944); *Kirksey v. Bd. of Supervisors*, 554 F.2d 139 (5th Cir. 1977); *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973).

LatinoJustice PRLDEF ("LJP") champions an equitable society by using the power of the law together with advocacy and education. Since its founding as the Puerto Rican Legal Defense and Education Fund, LJP has advocated for and defended the constitutional rights and the equal protection of all Latinos under the law. LJP has engaged in and supported law reform civil rights litigation across the country combatting discriminatory policies in numerous areas and has worked to secure the voting rights and political participation of Latino voters since 1972 when it initiated a series of suits to create bilingual voting systems throughout the United States. LJP has been involved in state and federal litigation regarding Latino political representation and voting rights, including constitutional and legal challenges to discriminatory redistricting plans or those otherwise implicating voting rights. *See, e.g.*, *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014); *Favors v. Cuomo* (*Favors I*), 881 F. Supp. 2d 356 (E.D.N.Y. 2012); *Torres v. Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974); *Arroyo v. Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974).

Asian Americans Advancing Justice ("Advancing Justice") is a national affiliation of five independent nonprofit organizations that actively works to advocate for the civil and human rights of Asian Americans and other underserved communities to promote a fair and equitable society for all. The Advancing Justice affiliation is comprised of our nation's oldest Asian American legal advocacy center located in San Francisco (Advancing Justice – Asian Law Caucus), our nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders located in Los Angeles (Advancing Justice – Los Angeles), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Collectively, Advancing Justice has a long-standing history of serving the interests of immigrant and language minority communities, and has operated a voting rights program for the last several decades that ensures equal access to the voting process, language assistance in voting for limited-English proficient voters, and fair redistricting that empowers Asian American communities through engagement and representation of Asian Americans during redistricting efforts at all levels.

The Asian American Legal Defense and Education Fund ("AALDEF"), founded in 1974, is a national organization that protects and promotes the

civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF has monitored elections through annual multilingual exit poll surveys since 1988. Consequently, AALDEF has documented both the use of, and the continued need for, protection under the Voting Rights Act of 1965. AALDEF has litigated cases around the country under the language access provisions of the Voting Rights Act, and seeks to protect the voting rights of language minority, limited English proficient and Asian American voters. AALDEF has litigated cases that implicate the ability of Asian American communities of interest to elect candidates of their choice, including lawsuits involving equal protection and constitutional challenges to discriminatory redistricting plans. *See, e.g.*, *Favors v. Cuomo* (*Favors I*), 881 F. Supp. 2d 356 (E.D.N.Y. 2012); *Diaz v. Silver*, 978 F.Supp. 96 (E.D.N.Y. 1997); *OCA-Greater Houston v. Texas*, No. 16-51126 (5th Cir. 2017); *Alliance of South Asian American Labor v. The Board of Elections in the City of New York*, Civ. No. 1:13-CV-03732 (E.D.N.Y. 2013); *Chinatown Voter Education Alliance v. Ravitz*, Civ. No. 06-0913 (S.D.N.Y. 2006).

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization committed to achieving full recognition of the civil rights of people who are lesbian, gay, bisexual, or transgender ("LGBT"), or living with HIV—many of whom are members of racial and ethnic minorities—through impact litigation, education, and public policy advocacy. Lambda Legal works to challenge the

intersectional harms caused by invidious discrimination based on sexual orientation, gender identity, race, and ethnicity. It has participated in this Court and lower courts in numerous cases addressing First Amendment, Equal Protection, voting rights, and other civil rights principles affecting LGBT individuals and members of additional minority groups. For example, Lambda Legal was party counsel in *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Obergefell v. Hodges*, 135 S. Ct. 2594 (2015); and participated as amicus in *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018) and *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

The Leadership Conference on Civil and Human Rights ("The Leadership Conference") is a diverse coalition of more than 200 national organizations charged with promoting and protecting the civil and human rights of all persons in the United States. It is the nation's largest and most diverse civil and human rights coalition. For more than half a century, The Leadership Conference, based in Washington, D.C., has led the fight for civil and human rights by advocating for federal legislation and policy, securing passage of every major civil rights statute since the Civil Rights Act of 1957. The Leadership Conference works to build an America that is inclusive and as good as its ideals. Towards that end, we have participated as an amicus party in cases of great public importance that will affect many individuals other than the parties before the court and, in particular, the interests of constituencies in The Leadership Conference coalition.